

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 06-198

BY SENATOR(S) Johnson, Bacon, Dyer, Entz, Evans, Fitz-Gerald, Groff, Grossman, Hagedorn, Hanna, Isgar, Keller, Kester, Owen, Sandoval, Shaffer, Spence, Tapia, Tochtrop, Traylor, Williams, Windels, and Tupa; also REPRESENTATIVE(S) Romanoff, Madden, Benefield, Berens, Boyd, Carroll M., Carroll T., Cerbo, Coleman, Frangas, Gallegos, Garcia, Green, Hodge, Jahn, Larson, McGihon, McKinley, Paccione, Pommer, Ragsdale, Riesberg, Solano, Soper, Stafford, Todd, Vigil, Weissmann, Borodkin, Kerr A., Merrifield, Buescher, Crane, Penry, White, and Witwer.

CONCERNING CONTRACTUAL AGREEMENTS WITH HEALTH CARE PROVIDERS
TO PROVIDE HEALTH CARE SERVICES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 21 **Contracts With Health Care Providers**

6-21-101. Health care contracts - required provisions - definitions. (1) ON AND AFTER JANUARY 1, 2007, A PERSON OR ENTITY THAT CONTRACTS WITH A HEALTH CARE PROVIDER SHALL COMPLY WITH THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PROVISIONS OF THIS SECTION AND SHALL INCLUDE THE PROVISIONS REQUIRED BY THIS SECTION IN THE CONTRACT. A CONTRACT IN EXISTENCE PRIOR TO JANUARY 1, 2007, THAT IS RENEWED OR RENEWS BY ITS TERMS SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION NO LATER THAN DECEMBER 31, 2007.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "EDIT" MEANS A PRACTICE OR PROCEDURE TO WHICH ONE OR MORE ADJUSTMENTS ARE MADE TO PROCEDURE CODES BILLED ON A CLAIM, INCLUDING THE AMERICAN MEDICAL ASSOCIATION'S CURRENT PROCEDURAL TERMINOLOGY CODE, ALSO KNOWN AS A CPT CODE, AND THE CENTERS FOR MEDICARE AND MEDICAID SERVICES HEALTH CARE COMMON PROCEDURE CODING SYSTEM, ALSO KNOWN AS HCPCS, FOR PAYMENT OR THAT RESULTS IN:

(I) PAYMENT FOR SOME, BUT NOT ALL, OF THE CODES;

(II) PAYMENT FOR A DIFFERENT CODE; OR

(III) A REDUCED PAYMENT AS A RESULT OF SERVICES PROVIDED TO A PATIENT THAT ARE CLAIMED UNDER MORE THAN ONE CODE ON THE SAME SERVICE DATE.

(b) "HEALTH CARE CONTRACT" MEANS A CONTRACT ENTERED INTO OR RENEWED BETWEEN A PERSON OR ENTITY AND A HEALTH CARE PROVIDER FOR THE DELIVERY OF HEALTH CARE SERVICES TO OTHERS.

(c) "HEALTH CARE PROVIDER" MEANS A PERSON LICENSED OR CERTIFIED IN THIS STATE TO PRACTICE MEDICINE, PHARMACY, CHIROPRACTIC, NURSING, PHYSICAL THERAPY, PODIATRY, DENTISTRY, OPTOMETRY, OCCUPATIONAL THERAPY, OR OTHER HEALING ARTS. "HEALTH CARE PROVIDER" ALSO MEANS AN AMBULATORY SURGICAL CENTER, A LICENSED PHARMACY OR PROVIDER OF PHARMACY SERVICES, A PROFESSIONAL CORPORATION, OR OTHER CORPORATE ENTITY COMPRISED OF LICENSED HEALTH CARE PROVIDERS AS PERMITTED BY THE LAWS OF THIS STATE.

(d) "MATERIAL CHANGE" MEANS A CHANGE THAT DECREASES THE

HEALTH CARE PROVIDER'S PAYMENT OR COMPENSATION, CHANGES THE ADMINISTRATIVE PROCEDURES IN A WAY THAT MAY REASONABLY BE EXPECTED TO SIGNIFICANTLY INCREASE THE PROVIDERS'S ADMINISTRATIVE EXPENSE, OR ADDS A NEW PRODUCT LINE.

(e) "PERSON OR ENTITY" MEANS A PERSON OR ENTITY THAT HAS A PRIMARY BUSINESS PURPOSE OF CONTRACTING WITH HEALTH CARE PROVIDERS FOR THE DELIVERY OF HEALTH CARE SERVICES.

(f) "PRODUCT" MEANS A PRODUCT LINE FOR HEALTH SERVICES, INCLUDING, BUT NOT LIMITED TO A PREFERRED PROVIDER ORGANIZATION OR HEALTH MAINTENANCE ORGANIZATION PRODUCT OR A MEDICARE, MEDICAID, OR WORKERS' COMPENSATION PRODUCT AS ESTABLISHED BY A PERSON OR ENTITY AND FOR WHICH THE HEALTH CARE PROVIDER MAY BE OBLIGATED TO PROVIDE SERVICES PURSUANT TO A CONTRACT.

(3)(a) EACH CONTRACT SHALL HAVE A SUMMARY DISCLOSURE FORM DISCLOSING IN PLAIN LANGUAGE THE FOLLOWING INFORMATION:

(I) THE COMPENSATION AND PAYMENT TERMS;

(II) ANY PRODUCT FOR WHICH THE HEALTH CARE PROVIDER IS TO PROVIDE SERVICE;

(III) THE TERM OF THE CONTRACT AND HOW THE CONTRACT MAY BE TERMINATED;

(IV) THE IDENTITY OF THE PERSON OR ENTITY RESPONSIBLE FOR THE PROCESSING OF THE PROVIDER'S COMPENSATION OR PAYMENT;

(V) ANY INTERNAL MECHANISM PROVIDED BY THE PERSON OR ENTITY TO RESOLVE DISPUTES CONCERNING THE INTERPRETATION OR APPLICATION OF THE TERMS OR CONDITIONS OF THE CONTRACT;

(VI) ANY PROVISIONS FOR THE AMENDMENT OF THE CONTRACT; AND

(VII) THE ORDER OF ADDENDA, IF ANY, TO THE CONTRACT.

(b) IF THE CONTRACT PROVIDES FOR TERMINATION FOR CAUSE BY EITHER PARTY, THE CONTRACT SHALL STATE THE REASONS THAT MAY BE

USED FOR TERMINATION FOR CAUSE, WHICH TERMS SHALL NOT BE UNREASONABLE, AND THE CONTRACT SHALL STATE THE TIME BY WHICH NOTICE OF TERMINATION FOR CAUSE SHALL BE PROVIDED AND TO WHOM THE NOTICE SHALL BE GIVEN.

(c) THE PERSON OR ENTITY SHALL IDENTIFY ANY UTILIZATION MANAGEMENT, QUALITY IMPROVEMENT, OR A SIMILAR PROGRAM THE PERSON OR ENTITY USES TO REVIEW, MONITOR, EVALUATE, OR ASSESS THE SERVICES PROVIDED PURSUANT TO A CONTRACT SUBJECT TO THIS SECTION. THE POLICIES, PROCEDURES, OR GUIDELINES OF SUCH PROGRAM APPLICABLE TO A PROVIDER SHALL BE DISCLOSED UPON REQUEST OF THE HEALTH CARE PROVIDER WITHIN FOURTEEN DAYS AFTER THE DATE OF THE REQUEST.

(4) (a) THE DISCLOSURE OF PAYMENT AND COMPENSATION TERMS PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL INCLUDE INFORMATION SUFFICIENT FOR THE HEALTH CARE PROVIDER TO DETERMINE THE COMPENSATION OR PAYMENT FOR THE HEALTH CARE SERVICES, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(I) THE MANNER OF PAYMENT, SUCH AS FEE-FOR-SERVICE, CAPITATION, OR RISK;

(II) THE FEE SCHEDULE OF CODES REASONABLY EXPECTED TO BE BILLED BY A PROVIDER'S SPECIALTY FOR SERVICE PROVIDED PURSUANT TO THE CONTRACT, INCLUDING, AS MAY BE APPLICABLE, SERVICE OR PROCEDURE CODES SUCH AS CURRENT PROCEDURAL TERMINOLOGY CODES OR HEALTHCARE COMMON PROCEDURE CODING SYSTEM CODES AND THE ASSOCIATED PAYMENT OR COMPENSATION FOR EACH SERVICE CODE. A FEE SCHEDULE MAY BE PROVIDED ELECTRONICALLY. UPON REQUEST, A PERSON OR ENTITY SHALL PROVIDE A HEALTH CARE PROVIDER WITH THE FEE SCHEDULE FOR ANY OTHER CODES REQUESTED AND A WRITTEN FEE SCHEDULE, WHICH SHALL NOT BE REQUIRED MORE FREQUENTLY THAN TWICE PER YEAR EXCLUDING WHEN IT IS PROVIDED IN CONNECTION WITH ANY CHANGE TO THE SCHEDULE. THE PERSON OR ENTITY SHALL ALSO STATE THE EFFECT, IF ANY, ON PAYMENT OR COMPENSATION IF MORE THAN ONE PROCEDURE CODE APPLIES TO THE SERVICE. A PERSON OR ENTITY MAY SATISFY THIS REQUIREMENT BY PROVIDING A CLEARLY UNDERSTANDABLE, READILY AVAILABLE MECHANISM, SUCH AS THROUGH A WEBSITE, THAT ALLOWS A HEALTH CARE PROVIDER TO DETERMINE THE EFFECT OF SERVICE CODES ON PAYMENT OR COMPENSATION BEFORE SERVICE IS PROVIDED OR A

CLAIM IS SUBMITTED.

(III) THE METHODOLOGY USED TO CALCULATE ANY FEE SCHEDULE, SUCH AS RELATIVE VALUE UNIT SYSTEM AND CONVERSION FACTOR, PERCENTAGE OF MEDICARE PAYMENT SYSTEM, OR PERCENTAGE OF BILLED CHARGES. AS APPLICABLE, THE METHODOLOGY DISCLOSURE SHALL INCLUDE THE NAME OF ANY RELATIVE VALUE SYSTEM, ITS VERSION, EDITION, OR PUBLICATION DATE, ANY APPLICABLE CONVERSION OR GEOGRAPHIC FACTOR, AND ANY DATE BY WHICH COMPENSATION OR FEE SCHEDULES MAY BE CHANGED BY SUCH METHODOLOGY AS ANTICIPATED AT THE TIME OF CONTRACTING.

(IV) THE IDENTITY OF ANY INTERNAL PROCESSING EDITS USED BY THE PERSON OR ENTITY, INCLUDING, BUT NOT LIMITED TO, THE PUBLISHER, PRODUCT NAME, VERSION, AND VERSION UPDATE OF ANY EDITING SOFTWARE USED BY THE PERSON OR ENTITY.

(b) NOTWITHSTANDING ANYTHING IN THIS SUBSECTION (4) TO THE CONTRARY, DISCLOSURE OF A FEE SCHEDULE IS NOT REQUIRED FROM A PERSON OR ENTITY IF THE FEE SCHEDULE IS FOR A PLAN FOR DENTAL SERVICES, ITS PROVIDERS INCLUDE LICENSED DENTISTS, THE FEE SCHEDULE IS BASED UPON FEES FILED WITH THE PERSON OR ENTITY BY DENTAL PROVIDERS, AND THE FEE SCHEDULE IS REVISED FROM TIME TO TIME BASED UPON SUCH FILINGS. SPECIFIC NUMERICAL PARAMETERS ARE NOT REQUIRED TO BE DISCLOSED.

(5) WHEN A PROPOSED CONTRACT IS PRESENTED BY A PERSON OR ENTITY FOR CONSIDERATION BY A HEALTH CARE PROVIDER, THE PERSON OR ENTITY MUST PROVIDE IN WRITING OR MAKE REASONABLY AVAILABLE THE INFORMATION REQUIRED IN SUBSECTION (4) OF THIS SECTION. IF THE INFORMATION IS NOT DISCLOSED IN WRITING, IT SHALL BE DISCLOSED IN A MANNER THAT ALLOWS THE HEALTH CARE PROVIDER TO EVALUATE THE PROVIDER'S PAYMENT OR COMPENSATION FOR SERVICES UNDER THE CONTRACT. AFTER THE CONTRACT IS EXECUTED, DISCLOSURE OF THE INFORMATION REQUIRED BY SUBSECTION (4) OF THIS SECTION SHALL BE MADE AVAILABLE UPON REQUEST BY THE HEALTH CARE PROVIDER. SUCH INFORMATION NEED NOT BE MADE AVAILABLE IN WRITTEN FORMAT MORE THAN TWICE A YEAR.

(6) (a) A MATERIAL CHANGE TO A CONTRACT SHALL OCCUR ONLY IF

A DESCRIPTION OF THE NATURE OF THE CHANGE AND THIRTY DAYS WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF THE CHANGE ARE GIVEN TO THE OTHER PARTY.

(b) A MATERIAL CHANGE SHALL BE EFFECTIVE UNLESS, WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE CHANGE, THE PROVIDER OBJECTS IN WRITING TO THE CHANGE.

(c) IF, WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF A CONTRACT CHANGE NO RESOLUTION OF THE OBJECTION OCCURS, EITHER PARTY TO THE CONTRACT MAY TERMINATE THE CONTRACT.

(d) IF A CHANGE TO THE CONTRACT IS ADMINISTRATIVE ONLY AND IS NOT A MATERIAL CHANGE, THE CHANGE SHALL BE EFFECTIVE UPON FIFTEEN DAYS NOTICE TO THE PROVIDER.

(e) THE PROVISIONS OF THIS SUBSECTION (6) DO NOT APPLY IF THE HEALTH CARE PROVIDER'S PAYMENT OR COMPENSATION IS BASED ON THE CURRENT MEDICARE PHYSICIAN FEE SCHEDULE FINAL RULE AS PUBLISHED ANNUALLY IN THE FEDERAL REGISTER AND THE CHANGE IN PAYMENT OR COMPENSATION RESULTS SOLELY FROM A CHANGE IN THE MEDICARE PHYSICIAN FEE SCHEDULE.

(7) A PERSON OR ENTITY SHALL NOT REQUIRE AS A CONDITION OF CONTRACTING THAT A PROVIDER PROVIDE SERVICES UNDER MORE THAN ONE PRODUCT OFFERED BY THE PERSON OR ENTITY.

(8) A PERSON OR ENTITY EXECUTING A CONTRACT TO WHICH THIS SECTION APPLIES SHALL NOT SELL, RENT, OR GIVE ITS PROVIDER NETWORK INFORMATION TO ANY OTHER PERSON, EXCEPT FOR THE PURPOSE OF PROVIDING CLAIMS PROCESSING FOR THE PERSON OR ENTITY. A PERSON OR ENTITY, OTHER THAN THE PERSON OR ENTITY THAT EXECUTES A CONTRACT TO WHICH THIS SECTION APPLIES, SHALL NOT ENFORCE AGAINST THE HEALTH CARE PROVIDER THE PAYMENT OR COMPENSATION TERMS OF THE CONTRACT UNLESS THE OTHER PERSON OR ENTITY IS CONTRACTUALLY BOUND TO ALL TERMS AND CONDITIONS OF THE CONTRACT EXECUTED BY THE PROVIDER AND:

(a) THE OTHER PERSON OR ENTITY IS CLEARLY IDENTIFIED IN THE CONTRACT EXECUTED BY THE PROVIDER; OR

(b) BEFORE HEALTH CARE SERVICES ARE PROVIDED, THE CONTRACT IS AMENDED BY A WRITING IN WHICH THE HEALTH CARE PROVIDER AGREES TO PROVIDE HEALTH CARE SERVICES FOR THE PAYMENT OR COMPENSATION DESCRIBED IN THE CONTRACT TO BE PAID BY THE OTHER PERSON OR ENTITY.

(9) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION, A CONTRACT SUBJECT TO THIS SECTION MAY BE MODIFIED, WITHOUT THE NEED FOR AMENDMENT, BY OPERATION OF LAW AS REQUIRED BY ANY APPLICABLE STATE OR FEDERAL LAW OR REGULATION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE RENEGOTIATION OF A CONTRACT IN EXISTENCE BEFORE THE APPLICABLE COMPLIANCE DATE IN THIS SECTION.

(10) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (11) OF THIS SECTION, NOTHING IN THIS SECTION SHALL PROHIBIT A PERSON OR ENTITY OR A HEALTH CARE PROVIDER FROM INCLUDING IN A CONTRACT AN AGREEMENT FOR BINDING ARBITRATION.

(11) A PERSON OR ENTITY SHALL NOT REQUIRE AS A CONDITION OF CONTRACTING THAT A HEALTH CARE PROVIDER WAIVE OR FOREGO ANY RIGHT OR BENEFIT TO WHICH THE HEALTH CARE PROVIDER MAY BE ENTITLED UNDER STATE OR FEDERAL LAW.

(12) A CONTRACT SUBJECT TO THIS SECTION SHALL NOT INTERFERE WITH A HEALTH CARE PROVIDER'S RIGHT TO SET THE HEALTH CARE PROVIDER'S PAYOR-MIX RATIO IN THE HEALTH CARE PROVIDER'S PRACTICE.

(13) A TERM FOR COMPENSATION OR PAYMENT SHALL NOT SURVIVE THE TERMINATION OF A CONTRACT, EXCEPT WITH THE AGREEMENT OF THE HEALTH CARE PROVIDER OR FOR A CONTINUATION OF COVERAGE REQUIRED BY LAW.

(14) A CONTRACT SHALL NOT PRECLUDE ITS USE OR DISCLOSURE FOR THE PURPOSE OF ENFORCING THE PROVISIONS OF THIS SECTION OR OTHER STATE OR FEDERAL LAW.

(15) EACH CONTRACT SHALL PROVIDE THAT THE PERSON OR ENTITY AND THE HEALTH CARE PROVIDER SHALL HAVE NO LESS THAN NINETY DAYS AFTER WRITTEN NOTICE TO THE OTHER PARTY TO TERMINATE THE CONTRACT WITHOUT CAUSE.

(16) THIS SECTION SHALL NOT APPLY TO:

(a) AN ORGANIZATION THAT EXCLUSIVELY CONTRACTS WITH A SINGLE MEDICAL GROUP IN A SPECIFIC GEOGRAPHIC AREA TO PROVIDE OR ARRANGE FOR HEALTH CARE SERVICES;

(b) AN EMPLOYMENT CONTRACT OR ARRANGEMENT BETWEEN AN INDIVIDUAL PROVIDER OR A CORPORATE ENTITY CONSISTING OF HEALTH CARE PROVIDERS AND ANOTHER HEALTH CARE PROVIDER;

(c) A CONTRACT OR ARRANGEMENT ENTERED INTO BY A HOSPITAL OR HEALTH CARE FACILITY THAT IS LICENSED OR CERTIFIED PURSUANT TO SECTION 25-3-101, C.R.S.;

(d) A CONTRACT FOR HEALTH CARE SERVICES THROUGH A PROGRAM FOR WORKERS' COMPENSATION, MEDICAID OR MEDICARE PROGRAM, THE CHILDREN'S BASIC HEALTH PLAN PROVIDED FOR IN ARTICLE 19 OF TITLE 26, C.R.S., OR THE COLORADO INDIGENT CARE PROGRAM CREATED IN PART 1 OF ARTICLE 15 OF TITLE 26, C.R.S; OR

(e) CONTRACTS BETWEEN A PERSON OR ENTITY FOR PHARMACY BENEFIT MANAGEMENT, SUCH AS WITH A PHARMACY BENEFIT MANAGEMENT FIRM AS DEFINED IN SECTION 10-16-102 (29.5), C.R.S. THIS EXCLUSION SHALL NOT INCLUDE A CONTRACT FOR HEALTH CARE SERVICES BETWEEN A PERSON OR ENTITY AND A PHARMACY, A PHARMACIST, OR A PROFESSIONAL CORPORATION OR CORPORATE ENTITY COMPRISED OF PHARMACIES OR PHARMACISTS AS PERMITTED BY THE LAWS OF THIS STATE.

(17) NOTWITHSTANDING THE APPLICABLE COMPLIANCE DATE REQUIREMENT IN SUBSECTION (1) OF THIS SECTION, A HEALTH MAINTENANCE ORGANIZATION HAVING FEWER THAN FIFTEEN THOUSAND ENROLLEES SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION WITHIN TWELVE MONTHS AFTER THE APPLICABLE COMPLIANCE DATE.

(18) DISPUTES AMONG PARTIES CONCERNING THE ENFORCEMENT OF THIS SECTION SHALL BE SUBJECT TO A MUTUALLY AGREED UPON ARBITRATION MECHANISM, WHICH SHALL BE BINDING ON ALL PARTIES. IF THE HEALTH CARE PROVIDER IS THE PREVAILING PARTY IN THE ARBITRATION, THE HEALTH CARE PROVIDER SHALL BE AWARDED AND LIMITED TO REASONABLE ATTORNEY FEES AND COSTS FOR ARBITRATION RELATING TO

THE ENFORCEMENT OF THIS SECTION. THE LIMITATION TO REASONABLE ATTORNEY FEES AND COSTS SHALL NOT APPLY TO DISPUTES REGARDING BREACH OF CONTRACT.

(19) NO PROVISION OF THIS SECTION SHALL BE USED TO JUSTIFY ANY ACT OR OMISSION BY A HEALTH CARE PROVIDER THAT IS PROHIBITED BY ANY APPLICABLE PROFESSIONAL CODE OF ETHICS OR STATE OR FEDERAL LAW PROHIBITING DISCRIMINATION AGAINST ANY PERSON.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 9, 2006, if adjournment sine die is on May 10, 2006); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or

part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO